

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VANESSA NICOLE STAMPS et al.,

Defendants and Appellants.

B197445

(Los Angeles County
Super. Ct. No. KA076313)

APPEAL from judgments of the Superior Court of Los Angeles County,
Charles E. Horan, Judge. Affirmed.

Thien Huong Tran, under appointment by the Court of Appeal, for Defendant and
Appellant Vanessa Nicole Stamps.

Linn Davis, under appointment by the Court of Appeal, for Defendant and
Appellant Demar L. Shows.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lance E. Winters
and Laura J. Hartquist, Deputy Attorneys General, for Plaintiff and Respondent.

Defendants and appellants, Vanessa Nicole Stamps and Demar L. Shows, appeal from the judgments entered following their convictions, by jury trial, for robbery (5 counts), assault on a peace officer with a semiautomatic weapon (Shows only), shooting at an occupied vehicle (Shows only) and evading an officer (Stamps only), with arming, firearm use and commission of an offense while on bail (Shows only) enhancements. (Pen. Code, §§ 211, 245, subd. (d)(2), 246, 12022, 12022.53, 12022.1; Veh. Code, § 2800.1)¹ Stamps was sentenced to state prison for 8 years, 8 months. Shows was sentenced to state prison for 39 years, 8 months.

The judgments are affirmed.

BACKGROUND

Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), we find the evidence established the following.

1. Prosecution evidence.

Dianna Rodriguez knew defendant Stamps and had met Stamps's boyfriend, defendant Shows. On the night of September 5, 2006, Stamps borrowed Rodriguez's car, a red, four-door Toyota Corolla.

That same night, three armed men, with bandanas covering their faces, robbed a McDonald's restaurant in West Covina. Shows forced two McDonald's managers, Erika Becerril and Gabriela Jorge, to open the safe. Jorge put the cash into a McDonald's plastic salad bag. The other robbers took a customer's purse and money from the cash registers.

Efrain Sandoval and his girlfriend were trying to place an order at the drive-thru microphone. When nobody responded, Sandoval drove up to the take-out window. He saw a McDonald's employee, with his hands in the air, facing a man with a gun. Sandoval drove into the street, parked and had his girlfriend call the police. A red Toyota

¹ All further statutory references are to the Penal Code unless otherwise specified.

Corolla drove past and Sandoval could see the armed man sitting in the rear passenger seat. Sandoval followed the Toyota for a short distance on the freeway before losing it.

Azusa Police Officer Louis Hernandez was on patrol that night. After hearing a broadcast about the McDonald's robbery, he spotted the Toyota and began following it. The Toyota was being driven by a woman and there were three male passengers. Azusa Police Officer Eddie Flores also began following the Toyota. After two more patrol cars arrived, the officers activated their lights and sirens.

Hernandez testified that Shows, who was sitting in the Toyota's front passenger seat, stuck his arm out the window. Shows was holding a dark-colored semiautomatic handgun. It appeared to Hernandez that Shows threw the gun out the car window. Hernandez did not hear the gun fire or see it discharge. Officer Flores testified that after the passenger in the front seat pointed a gun out the window, he saw a flash and heard a loud bang. Then the gun flew out of the person's hand and bounced off Flores's front fender.

The Azusa officers subsequently handed the chase over to the California Highway Patrol. At one point, the Toyota left the freeway and came to a stop. The two men in the back seat got out and fled on foot; they were never caught. The Toyota drove on. When the CHP finally caught the Toyota, Stamps was in the driver's seat and Shows was in the front passenger seat. On the right front floorboard there was a plastic McDonald's salad bag containing \$3,642. The car also contained a purse, a blue bandana and a black bandana.

A gunshot residue test on Shows's hands was positive. A Glock nine-millimeter semiautomatic handgun was discovered near where Hernandez and Flores had seen the gun come flying out of the Toyota. The Glock had a live round in the chamber. Scattered across the freeway were ten live rounds and one expended round.

Rodriguez, the owner of the Toyota, testified she had seen Shows with a black handgun at Stamps's apartment about three weeks before the robbery, and that Stamps had told Shows to put the gun away. Rodriguez identified a photograph of the recovered Glock as looking like the type of gun Shows had. One of the McDonald's victims identified the purse found in the Toyota as the one stolen from her during the robbery.

2. Defense evidence.

Stamps testified she had known Shows for six years, and that they had been dating since May 2006. On the day of the robbery, Stamps borrowed Rodriguez's car to pick up Shows in San Pedro. Shows was with two men, Two Cent and Doughboy. Stamps knew Two Cent as Shows's cousin, but she had never met Doughboy. The three of them got into the Toyota and had Stamps drive them to a McDonald's. The men got out of the car and told Stamps to wait. A few minutes later, they came rushing back "screaming and yelling at [Stamps] to drive." Stamps was scared, so she did what they said. Stamps testified she was "scared to death" because Doughboy had a gun: "The guy that I had never met before, the one that I just met that night, Doughboy, he's the one that had the gun. And I don't know him from anybody else so I don't know what he's capable of . . . I was terrified." Stamps drove onto the freeway. Someone was following them, so the men told her to get off the freeway. She did and started driving through a residential area. Everyone calmed down. Nobody said anything about a robbery.

Then a police car appeared. The men told her to get back on the freeway. The police car activated its lights and siren, but Stamps kept driving. Doughboy threw his gun out of the car. That was the only gun Stamps saw that night. She never heard a gunshot.

Contradicting Rodriguez's testify, Stamps denied having seen Shows with a gun at her apartment.

3. Rebuttal evidence.

Officer Carla Gordon of the Riverside County Sheriff's Department testified that on January 13, 2006, she questioned Stamps about her whereabouts on the previous day. Stamps said she had been in the company of Shows and a man named Dough, whose first

name was Pierre. Stamps said she had gone to high school with Shows and Dough. Officer Gordon later learned Pierre also went by the name Doughboy. Gordon testified that Pierre Wingfield, alias Doughboy, had been in police custody on the day of the McDonald's robbery.

CONTENTIONS

1. Shows contends the trial court misinstructed the jury on the application of a firearm enhancement.
2. Shows contends the trial court erred by staying, rather than striking, sentence enhancements under sections 12022 and 12022.53.
3. Stamps asks this court to conduct an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436.

DISCUSSION

1. *Trial court did not misinstruct on the firearm enhancement.*

Shows contends the trial court erred, in connection with count 7, assaulting a peace officer with a semiautomatic firearm (§ 245, subd. (d)(2)), by misinstructing the jury on the application of a firearm discharge enhancement. This claim is meritless.

a. Background

With regard to the enhancement findings the jury would have to make, the trial court instructed as follows:

“It is alleged in counts 3, 4 and 7 that the defendant Shows personally used a firearm and personally and intentionally discharged a firearm during the commission of the crimes charged.

“If you find the defendant Shows guilty of any such crime, you must determine whether the defendant Shows used a firearm, and intentionally and personally discharged a firearm in the commission of that felony.

“.....

“.....

“As to the discharge allegation, for the purpose of determining whether a firearm discharge has taken place during the commission of the crime of robbery, the commission

of the crime of robbery is not confined to a fixed place or a limited period of time.

A robbery is still in progress for purposes of a firearm discharge after the original taking of physical possession of the stolen property, while the perpetrator is in possession of the stolen property and fleeing in an attempt to escape.

“Likewise, it is still in progress so long as *immediate pursuers* are attempting to capture the perpetrator or to regain the stolen property.

“A robbery is complete when the perpetrator has eluded *any pursuers*, has reached a place of temporary safety, and is in unchallenged possession of the stolen property after having effected an escape with the property.” (Italics added.)

On count 3 (relating to victim Becerril) and count 4 (relating to victim Jorge), the jury found the firearm discharge enhancement allegation (§ 12022.53, subd. (c)) not true. On count 7 (relating to victim Flores), the jury found the firearm discharge enhancement true. Shows contends the reason the jury found the enhancement true as to count 7 was because it had been misled by the italicized portions of the jury instruction, as set forth above. He argues the reference to *any pursuers* nullified the more accurate reference to *immediate pursuers*, and was misleading because the “any pursuers” language “permits a finding that a robbery is still in progress if the perpetrator eluded officers in a high speed pursuit, and a day later was seen by the same officers in another city on the basis that these officer[s] were ‘pursuers.’ ”

We disagree with Shows’s reasoning.

b. *Discussion.*

Shows’s position is that the “any pursuer” language improperly nullified the fact the Toyota had successfully eluded the initial pursuer, Sandoval, and reached a place of temporary safety *before* the police chase began. However, we need not decide whether the instruction was correct because there could not have been any resulting harm to Shows. The trial court’s explanation of the robbery escape rule only applied to counts 3 and 4, and the jury found the discharge allegations *not true* as to those counts. While the jury found the firearm discharge allegation true as to count 7, that count charged assault

on a peace officer, not robbery. It does not matter if the robbery was continuing because the *crime* charged in count 7 was assaulting Flores, not robbing Becerril or Jorge.

Shows asserts, “No argument or instruction advised the jury that irrespective of whether or not the robbery was over, if appellant intentionally discharged a firearm at Officer Flores as part of an assault, a true finding was required as to the special allegation.” This assertion is inaccurate.

As set forth above, the trial court instructed the jury that counts 3, 4 and 7 alleged Shows had “discharged a firearm during the commission *of the crimes charged*,” that if the jury found Shows “guilty of any such crime” it must determine whether he discharged a firearm “in the commission of that felony,” (italics added) and that “for the purpose of determining whether a firearm discharge has taken place during the commission of the crime of robbery, the commission of the crime of robbery is not confined to a fixed place or a limited period of time, [etc.]” These instructions informed the jury there were two different crimes that could be enhanced by a firearm discharge finding: robbery and assault on an officer. And, as the Attorney General points out, “[T]he verdict itself suggests that the jury understood the instructions as it appears to have concluded that appellant did reach a place of temporary safety between the time that Sandoval was following them and when Officer Hernandez first saw them. The jury found the section 12022.53, subdivision (c) enhancement *not true as to Counts 3 and 4*, but they found it true as to Count 7.” (Italics added.)

The trial court did not misinstruct the jury regarding the firearm enhancement connected to count 7.

2. *Section 12022 and 12022.53, subdivision (b), enhancements were properly imposed and stayed.*

After sentencing Shows to the 20-year enhancement term on count 7 for discharging a firearm during commission of a felony (§ 12022.53, subd. (c)), the trial court imposed and stayed a 10-year enhancement on count 7 for use of a firearm during commission of a felony (§ 12022.53, subd. (b)). On counts 3 and 4, the trial court imposed additional terms of 3 years and 4 months (1/3 the midterm) under section

12022.53, subdivision (b), for use of a firearm during commission of a felony. On the same two counts, the trial court also imposed and stayed one-year enhancements under section 12022, subdivision (a)(1) (principal armed).

Shows contends these subordinate enhancement terms should have been stricken, not stayed. However, our Supreme Court has recently decided otherwise. *People v. Gonzalez* (2008) 43 Cal.4th 1118, held that section 12022.53, subdivision (f),² “require[s] that, after a trial court imposes punishment for the section 12022.53 firearm enhancement with the longest term of imprisonment, the remaining section 12022.53 firearm enhancements and any section 12022.5 firearm enhancements that were found true for the same crime must be imposed and then stayed.” (*People v. Gonzalez, supra*, at pp. 1122-1123.) The same logic applies to the section 12022 principal armed enhancement. (*People v. Sinclair* (2008) 166 Cal.App.4th 848, 854.)

There was no sentencing error.

3. *Stamps’s Wende brief.*

After examination of the record, appointed appellate counsel for Stamps filed an opening brief which raised no issues and asked this court to conduct an independent review of the record. By notice filed October 10, 2007, the clerk of this court advised Stamps to submit within 30 days any contentions, grounds of appeal or arguments she wished this court to consider. No response has been received to date.

² Section 12022.53, subdivision (f), provides: “Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).”

We have examined the entire record and are satisfied Stamps's counsel has complied fully with counsel's responsibilities. (See *Smith v. Robbins* (2000) 528 U.S. 259, 278-284 [120 S.Ct. 746]; *People v. Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.